

LANGE V. CALIFORNIA (06-23-21) NO. 20-18

SUMMARY

Arthur Lange drove by a CHP officer while playing loud music and honking his horn. The officer began to follow Lange and soon after turned on his overhead emergency lights to make a traffic stop. Rather than stopping, Lange drove a short distance to his driveway and entered his attached garage. The officer followed Lange into the garage. He questioned Lange and, after observing signs of intoxication, put him through field sobriety tests. A later blood test revealed that Lange's BAC was three times the legal limit.

The People charged Lange with misdemeanor driving under the influence. Lange moved to suppress the evidence obtained after the officer entered his garage, arguing that the warrantless entry violated the Fourth Amendment. The trial court denied Lange's motion and its appellate division also affirmed. It concluded that Lange's failure to pull over when the officer turned on his emergency lights created probable cause to arrest Lange for the misdemeanor of failing to comply with a police signal. And it stated Lange could not defeat an arrest begun in a public place by retreating into his home. The pursuit of a suspected misdemeanant, the court held, is always permissible under the exigent circumstances exception to the warrant requirement. The California Supreme Court denied review.

The United States Supreme Court reversed and held that under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always – that is, categorically – justify a warrantless entry into a home.

FACTS

Lange drove by a CHP officer in Sonoma. Lange was listening to loud music with his windows rolled down and repeatedly honking his horn. The officer began to tail Lange, and soon afterward turned on his overhead lights to signal that Lange should pull over. By that time, Lange was only about a hundred feet (some four seconds drive) from his home. Rather than stopping, Lange continued to his driveway and entered his attached garage. The officer followed Lange in and began questioning him. Observing signs of intoxication, the officer put Lange through field sobriety tests. Lange did not do well, and a later blood test showed that his BAC was more than three times the legal limit.

The People charged Lange with misdemeanor driving under the influence of alcohol and a noise infraction. Lange moved to suppress all evidence obtained after the officer entered the garage, arguing that the warrantless entry had violated the Fourth Amendment. The People contested the motion. It argued the officer had probable cause to arrest Lange for 2800(a) V.C. It also argued that the pursuit of a suspected misdemeanant always qualifies as an exigent circumstance authorizing a warrantless home entry. The trial court denied the motion and the Superior Court Appellate Division affirmed.

The Court of Appeal also affirmed, accepting the People's argument in full. In the court's view, Lange's "failure to immediately pull over" when the officer flashed his lights created probable cause to arrest him for a misdemeanor. And a misdemeanor suspect, the court stated, could "not defeat an arrest which has been set in motion in a public place" by "retreating into" a house or other "private place." Rather, an "officer's 'hot pursuit' into the house to prevent the suspect from frustrating the arrest" is always permissible under the exigent circumstances "exception to the warrant requirement."

That flat rule resolved the matter: “Because the officer was in hot pursuit” of a misdemeanor suspect, “the officer’s warrantless entry into [the suspect’s] driveway and garage [was] lawful.” The California Supreme Court denied review.

Courts are divided over whether the Fourth Amendment always permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanor suspect. Some courts adopted such a categorical rule, while others have required a case-specific showing of exigency. The United States Supreme Court granted review to resolve the conflict.

HELD

The Court noted that it has generally applied the exigent circumstances exception on a case-by-case basis. The exception requires a court to examine whether an emergency justified a warrantless search in each particular case. The exception is case specific. That approach reflects the nature of emergencies. Whether a now or never situation actually exists – whether an officer has no time to secure a warrant – depends upon facts on the ground.

The Court stated that the issue in the present case was whether to use that approach, or instead apply a categorical warrant exception, when a suspected misdemeanant flees from police into his home. Under the usual case-specific view, an officer can follow the misdemeanant when, but only when, an exigency – for example, the need to prevent destruction of evidence – allows insufficient time to get a warrant. The People argued that the fact of flight from the officer is itself enough to justify a warrantless entry. To assess that position, the Court looked to the Court’s precedents and to the common-law practices familiar to the Framers of the Constitution.

The People argued that the Court has already created the categorical warrant exception citing *U.S. v. Santana* (1976) 427 U.S. 38 (*Santana*). In *Santana*, police officers drove to *Santana*’s house with probable cause to think that *Santana* was dealing drugs, a felony under the applicable law. When the officers pulled up, they saw *Santana* standing in her home’s open doorway, some 15 feet away. As they got out of the van and yelled “police,” *Santana* “retreated into [the house’s] vestibule.” The officers followed her in, and discovered heroin. The Court upheld the warrantless entry as one involving a police “hot pursuit,” even though the chase “ended almost as soon as it began.” Citing “a realistic expectation that any delay would result in destruction of evidence,” the Court recognized the officers’ “need to act quickly.” The Court stated that *Santana*’s “act of retreating into her house,” could “not defeat an arrest” that had “been set into motion in a public place.”

The People interpreted that statement to support a flat rule permitting warrantless home entry when police officers (with probable cause) are pursuing any suspect – whether a felon or a misdemeanor.

The Court disagreed with the People’s interpretation stating that *Santana* was entirely consistent with a case-by-case exigency analysis because the Court carefully based its holding on the specific facts and circumstances. Assuming that *Santana* treated fleeing-felon cases categorically (always presenting exigent circumstances allowing warrantless entry), it still said nothing about fleeing misdemeanants.

The Court cited *Stanton v. Sims* (2013) 571 U.S. 3 (*Stanton*), in which it approved qualified immunity for an officer who had pursued a suspected misdemeanant into a home. Describing the same split of authority, the Court took the case to address “the law regarding warrantless entry in hot pursuit of a

fleeing misdemeanor is not clearly established.” The Court held neither Santana nor any other decision had resolved the matter one way or the other. The Court left things in that unsettled state.

Key to resolving the issue are two facts about misdemeanors: They vary widely, but they may be (in a word) minor. In California and elsewhere, misdemeanors run the gamut of seriousness.

The Court noted that it has held that when a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry. In *Welsh v. Wisconsin* (1984) 466 U.S. 740 (*Welsh*), officers responded to a call about a drunk driver only to discover he had abandoned his vehicle and walked home. No police pursuit was necessary, hot or otherwise. The officers just went to the driver’s house, entered without a warrant, and arrested him for a “nonjailable” offense. The State contended that exigent circumstances supported the entry because the driver’s “blood-alcohol level might have dissipated while the police obtained the warrant.” The Court rejected that argument on the ground that the driver had been charged with only a minor offense. The Court held, “Application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe only a minor offense” is involved.

The Court held that a suspect’s flight was not enough to justify a categorical rule. The Court stated that it had no doubt that in a great many cases flight creates a need for the police to act swiftly. For example, a suspect may flee because he is intent on discarding evidence. Or his flight may show a willingness to flee yet again, while the police await a warrant. But no evidence suggests that every case of misdemeanor flight poses such dangers.

Welsh held that when that is so, officers can probably take the time to get a warrant. And at times that will be true when a misdemeanor has forced the police to pursue him (especially given that “pursuit” may cover just a few feet of ground.) Those suspected of minor offenses may flee for innocuous reasons and in non-threatening ways. In misdemeanor cases, flight does not always supply the exigency needed for a warrantless home entry.

After its review, the Court held that common law does not support a categorical rule allowing warrantless home entry when a misdemeanor flees. It had a rule of that kind for felonies. But as *Welsh* held, the common law made distinctions based on “the gravity of the underlying offense.” When it came to misdemeanors, flight alone was not enough. Whether a constable could make a warrantless entry depended as well on other circumstances suggesting a potential for harm and need to act promptly. In that way, common law rules mostly mirror modern case law.

In summary the Court stated, **“The flight of a suspected misdemeanor does not always justify a warrantless entry into a home.** An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter – to prevent imminent harms of violence, destruction of evidence, or escape from the home. **But when the officer has time to get a warrant, he must do so – even though the misdemeanor fled.”**